

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEPHEN JONES,

Plaintiff

v.

C-1-04-367

THE KROGER CO., INC.,

Defendant

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 9) to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by plaintiff, this Court accepts the Report as uncontroverted.

The Report and Recommendation of the United States Magistrate Judge (doc. no. 9) is hereby **ADOPTED AND INCORPORATED HEREIN BY REFERENCE**. Defendant's Motion to Dismiss (doc. no. 4) is **GRANTED**; Counts II and VII of plaintiff's Complaint are **DISMISSED** and plaintiff's prayer for jury trial and extra-contractual damages is **DISMISSED**. This case shall proceed on plaintiff's 29 U.S.C. § 1132 claim for benefits.

This matter is **RECOMMITTED** to the United States Magistrate Judge for further proceedings according to law.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court